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OFFICE OF PETITIONS

In re Application of	:	
Jason R. Brindel	:	
Application No. 10/699,397	:	ON PETITION
Filed: October 31, 2003	:	
Attorney Docket No. 9314-41	:	

This is a decision on the "Petition to Accord the Proper Filing Date", filed April 2, 2004, which is being treated as a petition under 37 CFR 1.10 to accord the above-identified application a filing date of October 31, 2003.

The petition is **GRANTED**.

Petitioner argues that the above-identified application was filed on October 31, 2003, not November 3, 2003. In support thereof, petitioner has included a copy of a cover sheet itemizing the application, bearing Express Mail number EV 318419652 US. Petitioner has also included a copy of a printout from the United States Postal Service (USPS) website, indicating that Express Mail number EV 318419652 US was accepted by the USPS on October 31, 2003.

37 CFR 1.10(c) states that any person filing correspondence under 37 CFR 1.10, who can show that there is a discrepancy between the filing date accorded by the Office and the date of deposit as shown by the "date-in" on the Express Mail mailing label, may petition the Office to accord the correspondence a filing date as of the "date-in" on the Express Mail mailing label, provided:

(1) The petition is filed promptly after the person becomes aware that the Office has accorded, or will accord, a filing date other than the USPS deposit date;

(2) The number of the "Express Mail" mailing label was placed on the paper(s) or fees(s) that constitute the correspondence prior to the original mailing by "Express Mail";

(3) The petition includes a true copy of the "Express Mail" mailing label showing the "date-in," and of any other official notation by the USPS relied upon to show the date of deposit.

Here, Petitioner has not included a true copy of the Express Mail label for the above-identified application.¹ However, this requirement is being waived by the Office *sua sponte* in light of the corroborating USPS website evidence.

In view of the above, the application is entitled to a filing date of October 31, 2003.

Given the basis for granting this petition, no petition fee was required, and none has been charged.

The application file is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of **October 31, 2003, not November 3, 2003.**

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-0272.

Cliff Congo

Cliff Congo
Petitions Attorney
Office of Petitions

¹ Petitioner included a copy of an Express Mail label bearing Express Mail No. EV 353593652 US.